



The University of the South Pacific
Emalus Campus

Final Examination
Semester 1 2007

**FACULTY OF ARTS AND LAW
SCHOOL OF LAW**

COURSE NAME: Equity and Trusts

COURSE NO: LA 302

TIME ALLOWED: 3 hours

READING TIME: 10 Minutes

NUMBER OF PAGES: 4 including cover page

NUMBER OF QUESTIONS ON PAPER: 8

NUMBER OF QUESTIONS TO BE ANSWERED: 5 Questions, 2 in Part A and 3 in Part B or 3 in Part A and 2 in Part B.

MARK ALLOCATED FOR EACH QUESTION: 10 Marks

TOTAL MARKS: 50 Marks

SPECIAL INSTRUCTIONS

Students must answer FIVE questions, 2 in Part A and 3 in Part B or 3 in Part A and 2 in Part B.

Answers must be supported with appropriate case law or legislation.

Please do not turn over any page until you are told to do so.

Approved J. Repeski (Hos) 21/05/07

PART A

Question 1 (10 Marks)

From 2001 to April 2007 James Abusiu a computer engineer, was employed by North East Nerd Computer Company. The Company is based in Port Vila and is specialized in developing software computer games. It markets these products throughout the South Pacific region and is quite popular.

James Abusiu during the course of his employment was engaged in various projects involving the development of new computer games and all were good sellers. He also received support from the Company to under go training seminars given by various international experts. As a result, James Abusiu's skills improved tremendously and he was able to learn how to operate new computer programmes which were at the forefront of the industry.

In May 2007 James Abusiu resigned and took up employment with Softy Computer Ltd, which is one of the competitors of North East Nerd Computer Co. in the computer games market. At the time of his resignation James Abusiu had been working on the development of a new computer game called "Prison Break".

This project was very much in the early design stage and there was much work still to do to complete it. Basically though it was all James Abusiu's idea. He had talked to the managing director of North East Nerd Computer Company about it and the managing director supported the proposal saying that he thought that there was market for it. However, no funding had been allocated by the company towards the development of the idea as yet.

North East Nerd Computer Company learns that Softy Computer Ltd is about to develop a product along the lines of "Prison Break" and has found out that James Abusiu is in charge of the project. North East Nerd Computer Company wants to stop this if they can as they fear that it will significantly damage their share of the market.

Discuss what rights of action in equity North East Nerd Computer Company might have against James Abusiu or Softy Computer Ltd in these circumstances.

Question 2 (10 Marks)

Axe has accumulated wealth and desires to dispose of some of it through the use of trust. As a result, he called his friend Jizzy Bond (JB) who is a lawyer by profession. However, Alex was unable to reach JB by phone thus he leaves the following message with JB's secretary "Effective 1st July, I am giving you my stationery store for my son, James, including all inventory, accounts receivable, and my stationery store account with ANZ Bank. I want all income, in quarterly payments, to go to James for life, and at his death, I want the income to go to James' only daughter, Salote until she's 30. Then she can have it all. I have informed the bank about this and told them the account is yours, as trustee, from now on. All the books will be delivered to you by 30th June".

Later that day Alex and his best friend Didi drove to the office of Alex's wife Ann. He told his wife that he was giving her USD\$10, 000 to use as initial capital to set up her own clothing shop. He signed a cheque for USD\$10, 000 and then gave it Ann. He instructed Ann to repay the money by making monthly deposits of US\$1, 000 in the stationery story account as soon as the clothing shop starts to make profit. Ann used the money to buy a new Toyota Hilux instead. Alex also conveyed a parcel of

commercial real estate to his daughter Linda. Alex executed and recorded the deed with the Lands Department but did not explicitly set forth any trust terms or trustee powers or limitations in the deed.

On 28th June 2007 Alex had an argument with his wife Ann after he found out his wife had an affair with his best friend Didi. He demanded the immediate return of the USD\$10, 000 he gave Ann. On the 29th June 2007 Alex had a heart attack and died. He had no chance to meet with Didi concerning the trust agreement for his son James and grand daughter Salote. Also he did not have the chance to hand over the deed to his daughter Linda.

Discuss the following fully:

- i) Did Alex create a valid trust in favour of his son James and granddaughter Salote? Explain. (2.5 Marks)

- ii) Assume that a trust was created for James and Salote. When JB heard of the message from his secretary, he did not wish to serve as trustee. What would be the result? (2.5 Marks)

- iii) What would happen to the USD\$10, 000? (2.5 Marks)

- iv) Did Alex create a valid trust in favour of his daughter Linda? (2.5 Marks)

Question 3 (10 Marks)

Beyonce Adam is a beneficiary of a family trust known as the Adam's family trust. Adam seeks a ruling as to how he can either terminate or vary the terms of the trust. What legal advice would you give Beyonce Adam?

Question 4 (10 Marks)

Compare and contrast the various meanings of "public benefit" in relation to a charitable trust and discuss whether it would be more appropriate to have just one definition serving the four possible categories of charitable trust enunciated by Lord Macnaghten in *Commissioners of Income Tax v. Pemsel* (1891) AC 531.

PART B

Question 5 (10 Marks)

Peter Tom, a trustee, wishes to invest US\$1 million of trust money in Lion Park Corporation. The company was established six months ago to explore the unproven but potentially lucrative technique of converting steel into gold. Although Peter Tom is aware the investment is risky, he believes that the trust has an opportunity to reap a substantial profit on its original investment. How would you advise Peter Tom with respect to the legality of the proposed transaction in equity.

Question 6 (10 Marks)

The language of a trust instrument provided "The Trustee named herein shall be liable for any act of self dealing or bad faith in the administration of this trust". Critically analyse the use of this clause and how the court is likely to treat it.

Question 7 (10 Marks)

Describe the equitable remedies that are available to courts today. Comment on the circumstances in which they can be granted.

Question 8 (10 Marks)

'Equity will not perfect an imperfect gift'. Discuss how this maxim operates by making reference to *Milroy v Lord* (1892) 4 DeGF & J; 45 ER 1185.